

The Customer and *accessIndiana* and/or CivicNet wish to contract for the provision of services from *accessIndiana* and/or CivicNet to Customer as per the Terms and Conditions below. *accessIndiana/CivicNet* provides online access, from Customer's terminals, to a number of databases with related services. Customer wishes to use the services made available by *accessIndiana/CivicNet*. *accessIndiana* is a service of the state of Indiana, through its Intelnet Commission. CivicNet is a service of the Consolidated City of Indianapolis/ Marion County government.

01. AGREEMENT

This agreement sets forth the terms and conditions under which *accessIndiana* and/or CivicNet will provide services to Customer.

02. *accessIndiana/CivicNet* WITHDRAWAL OF SERVICE

accessIndiana/CivicNet reserves the right to withdraw any service or services without consulting Customer prior to withdrawing such service and shall have no liability whatsoever to Customer in connection with deletion of any such service.

03. ACKNOWLEDGEMENT

Customer acknowledges that it has read this Agreement and agrees that it is the complete and exclusive Agreement between the parties, superseding all other communications, oral or written. This Agreement may be modified only by written amendment signed by the parties, except as otherwise provided for in this paragraph. *accessIndiana/CivicNet* shall be entitled to announce, online or in writing, changes to the network, to the services provided, to prices, or other changes, which changes shall constitute modifications to this agreement once announced. In the event Customer issues a purchase order or other instrument covering the services herein specified, it is understood and agreed that the Purchase Order is for Customer's internal purposes only and shall in no way modify, add to, or delete any of the terms and conditions in this Agreement.

04. CONDITIONS OF USE

- a) **Hours of Service:** Service will be provided on a non-guaranteed basis seven days per week (Sunday through Saturday), twenty-four (24) hours per day, excluding scheduled maintenance as designated from time to time by *accessIndiana/CivicNet* in its sole discretion.
- b) **ID / Account Numbers:** *accessIndiana/CivicNet* will issue to the Customer a requested number of ID/account numbers. Customer is responsible for preserving the secrecy of its account numbers and for ensuring that access to services and use of its ID/account numbers are controlled by it and that, in those instances where a purchase order provides time and/or dollar and/or database limitations, use of the system does not exceed those limitations; *accessIndiana/CivicNet* shall not be responsible for these responsibilities of Customer. Customer is liable for any and all charges for services to its ID/account numbers, whether or not authorized by Customer.
- c) **Copyright and Ownership of Information:** Customer agrees to comply with any copyright notices or other limitation on use which are applicable to services, databases, or other information provided through applicable services, databases, or other information provided through *accessIndiana/CivicNet*.

d) **Termination of Subscription:** UPON CEASING TO BE A SUBSCRIBER TO *accessIndiana/CivicNet*, Customer AGREES to destroy or return to *accessIndiana/CivicNet*, all originals and all copies of the network access software (the disk or disks) furnished to Customer upon subscription to *accessIndiana/CivicNet*, together with any amendments or modifications that may have been sent to Customer or downloaded by Customer during Customer's subscription; AND TO ERASE from Customer's hard disk and any long-term storage medium residing on any computer or server or network onto which Customer may have copied them, the programs and any amendments from any such disk or disks. Customer agrees to promptly certify the destruction or return of such programs or disks, in writing, if requested by *accessIndiana/CivicNet*. Customer acknowledges that *accessIndiana/CivicNet* may not have an adequate remedy at law for any breach of this clause that Customer may commit, and therefore, in addition to any other remedies it may invoke, *accessIndiana/CivicNet* may seek and obtain an injunction in court to enforce the provisions of this clause.

e) **Acceptance of this agreement** allows Customer a nontransferable END-USER License for the provided software. The software is licensed, not sold, and is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Customer may copy software onto Customer's computer or computers at one location only. Software furnished is dedicated for Customer's use only. Customer may not rent or lease the software or separate component parts to anyone else. Customer may also store or install a copy of the software on a storage device, such as a network server, for Customer's use only.

05. PAYMENT

- a) Invoices for all services rendered will be prepared by *accessIndiana/CivicNet* and provided by *accessIndiana/CivicNet* either online or by mail. Rates shall be in accordance with the current *accessIndiana/CivicNet* rate schedule. Terms of invoice payment shall be net twenty (20) days.
- b) In addition to the rates contained herein, Customer shall pay *accessIndiana/CivicNet* for all sales, use, and excise taxes incurred by *accessIndiana/CivicNet* in providing services to Customer.
- c) Past due invoices will be subject to a delinquency charge of 1.5% per month of the amount in arrears, or the legal limit, whichever is less. Customer agrees to pay all costs of collection of delinquent accounts, including reasonable attorney's fees, as permitted by law.

06. LIMITATION OF LIABILITY

- a) The remedies set forth in this Agreement are exclusive and in no event shall *accessIndiana/CivicNet*, its directors, officers, agents, or employees, be liable for pecial, indirect, incidental, or consequential damages, including, but not limited to, lost income or lost revenues, whether such damages arise out of breach of contract, negligence, strict liability, or any other theory of liability. Such damages shall in any event be limited to the charges paid for the previous month by Customer for the services in connection with which a claim of liability is asserted or imposed. Customer specifically understands and recognizes that the system by which these services are offered to it is experimental and may experience problems of various kinds resulting in an inability to provide services.
- b) Customer agrees that *accessIndiana/CivicNet* will not be liable for any claim or demand of any nature or kind whether asserted against *accessIndiana/CivicNet* or against Customer by any third party, arising

claims of third parties arising out of the Customer's use of the services or materials provided pursuant to this Agreement.

c) *accessIndiana/CivicNet* shall not be liable for or deemed to be in default for any delays or failure in performance or interruption of service resulting directly or indirectly from any cause or circumstance beyond its reasonable control, including problems with or delays caused by its database providers or other providers.

d) No action or suit, regardless of form, other than an action for payments due *accessIndiana/CivicNet*, arising out of the transactions pursuant to this Agreement may be brought by either party more than one year after the cause of the action accrues.

e) *accessIndiana, CivicNet, Indiana Interactive, Inc., state of Indiana, the Consolidated City of Indianapolis/Marion County government, county and local government agencies and universities, professional associations and all other parties who may from time to time provide information for access on accessIndiana/CivicNet* shall at no time be liable for any errors in, or omissions from, information available on *accessIndiana/CivicNet*.

07. WARRANTY

a) *accessIndiana/CivicNet* make no warranties, express or implied, including but not limited to implied warranties of merchantability or fitness for any particular purpose. While *accessIndiana/CivicNet* and its suppliers strive for accuracy and completeness of data and services furnished pursuant to this Agreement, no warranty or representation is made or implied as to such.

b) Customer warrants that it is aware of, and will comply with, all applicable federal, state, or other laws with regard to access to, or use of, any and all information, databases, programs, or other products to which access is provided by or through *accessIndiana/CivicNet*.

08. RATE CHANGES

a) Rates are as set forth in the *accessIndiana* Service Agreement and are established by the state governing authority of *accessIndiana* in its sole discretion (unless this Agreement is a fixed term agreement as detailed in Paragraph 8b below). Such rates may change as the governing authority decides.

b) Rates are as set forth in the *CivicNet* Service Agreement and are established by the City of Indianapolis/Marion County governing authority of *CivicNet* in its sole discretion (unless this Agreement is a fixed term agreement as detailed in Paragraph 8b below). Such rates may change as the governing authority decides.

c) The parties may enter into a fixed-term agreement setting forth a set rate for a specified term. Any such agreement will be evidenced and detailed in writing.

09. LIMITATIONS

Under no circumstances may Customer, or any other party acting by or through Customer or using Customer's ID/account numbers, use data received from or through *accessIndiana/CivicNet* in any way except in full and complete compliance with all applicable laws.

10. TRADENAME/TRADEMARK

Customer agrees that it will not use the trademark "*accessIndiana*", "*CivicNet*", or the names or means of identifying any of *accessIndiana's* or *CivicNet's* services in any fashion unless specifically authorized to do so in writing by *accessIndiana/CivicNet*. Customer agrees not to tamper with, alter, or change in any fashion, any databases or programs made available to Customer by *accessIndiana/CivicNet*.

11. GENERAL CONDITIONS

a) **Waiver:** The waiver, modification, or failure to insist on any of these terms or conditions one or more times by *accessIndiana/CivicNet* shall not void, waive, or modify any of the other terms or conditions in this Agreement, nor be construed as a waiver or relinquishment of *accessIndiana's/CivicNet's* right to performance of any such term or terms in the future.

b) **Severability:** If any provision or part of the Agreement shall be declared illegal, void, or unenforceable, the remaining provisions shall continue in full force and effect.

c) **Governing Law:** This Agreement shall be governed by and construed according to the laws of the state of Indiana as such laws are applied to contracts made and to be performed entirely in Indiana, and all actions hereunder shall be brought in a federal or state court of competent jurisdiction in Indiana and in no other jurisdiction.

d) **Assignment:** This Agreement is not assignable or transferable by Customer and any attempted assignment or transfer by Customer shall be null and void and of no force or effect. *accessIndiana/CivicNet* may assign this Agreement and/or the payments due to *accessIndiana/CivicNet* without notice to or requirement for Customer's permission or approval.

e) **Direct Debit (ACH) Option** shall mean that the Customer's banking institution automatically deducts the billed amount out of Customer's account monthly.

f) **Visa/MasterCard/Discover/American Express Option** shall mean that the billed amount is automatically charged monthly to the Customer's charge card.

g) **Monthly Invoice/Check Option** shall mean that *accessIndiana/CivicNet* bills Customer monthly; \$15 minimum monthly fee applies only if Customer has used less than \$15 in combined services and/or connect time in that month.

h) **Automatic Subscription Renewal** shall mean that Customer shall be billed (or credit card charged) for each year's account fee on the anniversary date of monthly account agreement. No refunds of account fees shall be given. The agreement may be cancelled by Customer with at least 30 days notice in writing to *accessIndiana/CivicNet* in advance of the agreement's anniversary date.

i) **Identical Duplicate Transactions** that occur consecutively within a 15 minute period will not be charged, except for State Police Limited Criminal History reports.

12. accessIndiana MANAGEMENT

accessIndiana is managed by Indiana Interactive, Inc., a wholly-owned subsidiary of NIC, Inc.

13. CivicNet MANAGEMENT

CivicNet is managed by Indiana Interactive, Inc., a wholly-owned subsidiary of NIC, Inc.

END OF TERMS AND CONDITIONS